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IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

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CRM-M No.34447 of 2024
Date of decision: 22.07.2024

M/s Wahi Developers through its
proprietor Sanjay Wahi ... Petitioner

Vs.
State of Haryana and another ... Respondents

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. Talim Hussain, Advocate,
for the petitioner.

MANISHA BATRA, J. (Oral)

1. The instant petition under Section 482 Cr.P.C. has been filed by the petitioner seeking setting aside of order dated 01.04.2024 as passed by the Court of Judicial Magistrate First Class, Bahadurgarh in Complaint No.COMA-1515-2023 titled as *Shailja Bhayana v. Sanjay Wahi* filed under Section 138 of the Negotiable Instruments Act, 1881 (For short "NI Act") whereby, the petitioner was ordered to be summoned as an accused.

2. Brief facts relevant for the purpose of disposal of this petition are that the aforementioned complaint has been filed by the respondent No.2 against the petitioner on the allegations that the petitioner had issued a cheque bearing No.004089 dated 01.09.023 amounting to Rs.60,00,000/- in discharge of his existing liabilities. The said cheque

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was dishonoured by the banker of the petitioner with the remarks "Funds Insufficient". The petitioner did not make the payment of amount of the cheque despite serving of statutory notice against him. The learned Magistrate, after pursuing the allegations in the complaint as well as the preliminary evidence so produced by the respondent No.2, passed the impugned order by observing that there was prima facie sufficient material to proceed against the petitioner under Section 138 of NI Act. Feeling dissatisfied, the instant petition has been filed.

3. It is argued by learned counsel for the petitioner that the abovementioned complaint has been filed against him by the respondent No.2 by making toally false allegations. Infact, the respondent No.2 is sister-in-law of Ashok Kumar Adlakha who was a long time business friend of the petitioner. Both of them had planned to purchase a property alongside Yamuna Expressway, Noida in the year 2015-16 for carving plots and selling the same. They had jointly agreed to invest money for that purpose. Subsequently, Ashok Kumar asked the petitioner to execute an agreement in the name of his firm i.e. Wahi Developers instead of his own name and to handover some blank cheques for the purpose of security against invested money. The petitioner believing him had signed those cheques and had given them to Ashok Kumar. They had purchased land and the same was developed also. As per their oral agreement, both of them used to transact the funds in the account of firm of the petitioner and in lieu thereof, Ashok Kumar had taken some blank signed cheques

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subsequently also. It is alleged that it is one of those cheques that has been misused by Ashok Kumar for the purpose of getting this complaint lodged by filling this cheque in the name of respondent No.2, though he never had any transaction with the respondent No.2 nor any financial assistance was taken or given by him from her. It is submitted that the trial Court while passing the impugned order did not consider the reply which was sent by the petitioner in response to the statutory notice sent by the respondent No.2 and committed an error in passing the impugned order which is based on conjectures and surmises. It is argued that the learned trial Court did not consider the fact that it was not proved that the cheque in question was issued against any legally enforceable debt or liability. The ingredients necessary to constitute offence under Section 138 of the NI Act were missing in the case and, therefore, he could not be prosecuted for the same. With these broad submissions, it is argued that the impugned order is not sustainable in the eyes of law and is liable to be set aside.

4. I have heard learned counsel for the petitioner at considerable length besides perusing the record.

5. The petitioner is seeking quashing of the summoning order dated 01.04.2024 as issued against him in a complaint filed under Section 138 of NI Act by the respondent. The case of the petitioner is that the cheque in question was issued as a security and that too as blank signed cheque in favour of Ashok Kumar Adlakha, brother-in-law of the

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respondent No.2 and it was not issued to discharge any liability towards the respondent No.2. The question as to whether the summons issued by the trial Court can be ordered to be quashed on the basis of factual defences taken by an accused at that stage by filing a petition for quashing of such order, has been considered by Hon'ble Apex Court in **Rathish Babu Unnikrishnan v. The State (Govt. of NCT of Delhi) and another**, 2022 (2) R.C.R. (Criminal) 871, wherein it was observed that the burden of proving that there is no existing debt or liability, is to be discharged in the trial as there is a legal presumption of a cheque having been issued in the discharge of liability and such presumption must receive due weightage. It was held that in a situation where an accused moves Court for quashing even before trial has commenced, the approach of the Court should be careful enough to not to prematurely extinguish the case by disregarding the legal presumption which supports the complaint. The Hon'ble Supreme Court had also referred to another case cited as **M.M.T.C. Ltd. and another v. Medchl Chemicals and Pharma (P) Ltd. and another**, (2002) 1 SCC 234, wherein it was observed that there is no requirement that the complainant must specifically allege in the complaint that there was a subsisting liability. The burden of proving that there was no existing debt or liability, was on the respondents. This they have to discharge in the trial. At this stage, merely on the basis of the averments in the petition filed by the accused, the High Court should not have concluded it that there was no existing

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debt or liability.

6. Further, the question as to whether the High Court should take recourse to Section 482 Cr.P.C., in such like cases, was considered by Hon'ble Supreme Court in another case cited as **Rajeshbhai Muljibhai Patel v. State of Gujarat**, (2020) 3 SCC 794, by observing that when disputed questions of facts are involved which need to be adjudicated after the parties adduce evidence, the complaint under Section 138 of NI Act ought not to be quashed by the High Court by taking recourse to Section 482 Cr.P.C.

7. On applying the principles of law as laid down in the above cited cases to the present case, it has been noticed that after considering the evidence available on record in the form of preliminary evidence as adduced by the respondent No.2-complainant, the learned Magistrate passed the impugned order and it is discernible that the view taken by the Magistrate is possible view that cheque in question was drawn in discharge of a legally enforceable debt. As such, in the presence of such legal presumption, it is not judicious to quash the order passed by the learned Magistrate by going into the details of the allegations as levelled by the petitioner-accused or by carrying some detailed enquiry without giving opportunity to the trial Court to evaluate the evidence of the parties firstly as has been held in **Rathish Babu Unnikrishnan's** case (Supra). Undoubtedly, this Court has ample powers to quash a criminal proceeding at any stage. However, such powers are to be exercised with

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great circumspection and sparingly and also in rarest of rare cases. It is not expected to embark upon an enquiry as to the reliability or genuineness or otherwise of the allegations levelled in the complaint by invoking the extraordinary/inherent powers of this Court and that too at the pre trial stage since quashing of proceedings at this stage would obviously result in final adjudication of dispute between the parties without giving them opportunity to adduce evidence. More particularly, when there is a legal presumption that when a cheque is issued and the signatures over the same are not disputed by the accused. The balance of convenience is in favour of the complainant though obviously, the accused would certainly be given opportunity to rebut that presumption. Consequent to the discussion as made above, I have no hesitation to hold that the summoning order passed by the learned Magistrate does not warrant any interference at this stage when the factual controversy between the parties is yet to be canvassed and considered by the trial Court. Accordingly, finding no reason to allow the petition, the same is dismissed.

	(MANISHA BATRA)
	JUDGE
22.07.2024	
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Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No